

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20584

FEB 15 3 40 PM '94

MM Docket No. 94-5

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Olivia and Sauk Rapids,
Minnesota)

RM-8420

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: January 14, 1994; Released: February 10, 1994

Comment Date: April 4, 1994

Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Tri-County Broadcasting, Inc. ("petitioner"), requesting the substitution of Channel 269C2 for Channel 269A at Sauk Rapids, Minnesota. Petitioner also requests modification of its license for station WHMH(FM), Channel 269A, to specify operation on Channel 269C2. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Sauk Rapids with expanded reception service. Channel 269C2 can be allotted to Sauk Rapids, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 261A is substituted for Channel 269A at Olivia, Minnesota.¹ The proposed substitution at Olivia can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station KOLV.² We shall also propose to modify the license for station WHMH(FM) to specify operation on Channel 269C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station KOLV, Olivia, Minnesota, for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 269C2 to Sauk Rapids, Minnesota, since it would provide the community with expanded reception service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Olivia,		
Minnesota	269A	261A
Sauk Rapids,		
Minnesota	269A	269C2

5. IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, Olivia Broadcasting Company, the licensee of Station KOVL, Olivia, Minnesota, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 261A in lieu of Channel 269A.

6. Pursuant to Section 1.87 of the Commission's Rules, Olivia Broadcasting Company, may not later than April 5, 1994, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Olivia Broadcasting Company to furnish additional information. If Olivia Broadcasting Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Olivia Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

George S. Blum, President
Olivia Broadcasting Company
907 West Lincoln, Hwy. 212
P.O. Box 6
Olivia, Minnesota 56277

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

¹ The coordinates for Channel 269C2 at Sauk Rapids are 45-32-00 North Latitude and 94-17-00 West Longitude.

² The coordinates for Channel 261A at Olivia are 44-45-51 North Latitude and 94-55-45 West Longitude.

9. Interested parties may file comments on or before April 4, 1994, and reply comments on or before April 19, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner as follows:

Tri-County Broadcasting, Inc.

P.O. Box 366

Sauk Rapids, Minnesota 56379

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.